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1980

# Maxine K. Blackburn v. Terrell M. Blackburn : Brief of Defendant-Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

MAXINE K. BLACKBURN,  
  
Plaintiff-  
Appellant,  
  
vs.  
  
TERRELL M. BLACKBURN,  
  
Defendant-  
Respondent.

NO. 16651

BRIEF OF DEFENDANT-RESPONDENT

Appeal from the Judgment of the Third District Court  
in and for Salt Lake County  
Honorable Dean E. Conder, Judge

Earl Jay Peck  
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FILED

JAN 17 1980

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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MAXINE K. BLACKBURN,	)	
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Appellant,	)	
	)	
vs.	)	NO. 16651
	)	
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BRIEF OF DEFENDANT-RESPONDENT

No. 16651

ARGUMENT

POINT I

ASSUMING ARGUENDO THAT THE LOWER COURT ERRED,  
APPELLANT HAS NOT BEEN HARMED THEREBY.

Appellant Mrs. Blackburn and Respondent Mr. Blackburn were divorced in Harris County, Texas. Mrs. Blackburn was awarded the proceeds from the sale of the home with the exception of \$1,000.00 which was awarded to Mr. Blackburn. Mrs. Blackburn was awarded custody of the two children and \$250.00 per month support for the children.

Between the date of the divorce and April 1979, an arrearage representing approximately ten months support accrued. A substantial amount had, therefore, been paid despite the fact that Mr. Blackburn's earnings had been very meager, during this period. (Exhibit 1)

In the district court Mrs. Blackburn, represented by the Salt Lake County Attorney, sought a judgment against Mr. Blackburn for child support arrearage. Mr. Blackburn admitted that an arrearage existed and moved the court for an order reducing the amount of the support payment to \$150.00 per month and for an order allowing him to pay the judgment for the arrearage at the rate of \$50.00 per month for a total monthly payment of \$200.00. Instead of lowering the support to \$150.00 however, the trial court required Mr. Blackburn to pay \$200.00 current child support and ordered execution on the arrearage stayed as long as he remained current (or within two months of being current) on the \$200.00 per month payments. Appellant agrees that the court had the power to reduce the monthly payment amount (Appellant's brief at 4).

It is obvious that the net payment to Mrs. Blackburn would be the same whether the amount paid was (1) \$150.00 per month support plus \$50.00 on the arrearage as requested at the hearing, or (2) the \$200.00 per month as ordered by the lower court. In fact, Mrs. Blackburn is actually better off under the lower court's order because when circumstances indicate a greater ability to pay, she will still have her full judgment and will have received \$200.00 per month in the meantime.

If the lower court erred in staying execution on the judgment, the error was, therefore, harmless. Mrs. Blackburn

would be no better off if she received \$150.00 per month support and \$50.00 per month toward the arrearage.

It is obvious from the evidence introduced at the hearing that Mr. Blackburn could pay only \$200.00 per month. This fact was not questioned or challenged at the hearing. The evidence also reflected the fact that Mr. Blackburn had made a substantial effort to pay his support obligation. It is to his credit that the arrearage was not larger given his personal problems (Tr. 3,6) and his inability to maintain steady employment (Tr. 3).

Because the amount paid to Appellant would be the same whether paid at the rate of \$150.00 current and \$50.00 on the arrearage or \$200.00 current with execution stayed, she has not been prejudiced by any alleged error. The judgment below should, therefore, be affirmed.

#### POINT II

FULL FAITH AND CREDIT HAS BEEN GIVEN TO THE TEXAS DECREE AND THE LOWER COURT WAS NOT REQUIRED TO EXPAND APPELLANTS RIGHTS.

In the case relied upon by Defendants, Bates v. Bates, 560 P.2d 706 (Utah 1977) the husband sought to have his accrued support obligations set aside retroactively. Unlike the instant case, a simple stay or payment plan was not sought. In Scott v. Scott, 19 U.2d 267, 430 P.2d 580 (1967) the



Utah Supreme Court considered an issue similar to that raised in Bates. The Scott opinion is instructive because it involved the enforcement of a California decree. In Scott the Utah Supreme Court held in effect that the foreign judgment would be granted the same faith and credit as the judgment would be afforded in California. In the instant case, therefore, it is important to examine Texas law as to what the Texas Court would do in the instant case.

In Texas a father's liability for support payments is not a personal judgment enforceable by execution or garnishment. Menner v. Ranford, 487 S.W. 2d, 698 at 699 (Texas 1972); V.T.C.S. Art. 4639a. The only remedy for enforcement of a support order is a civil contempt action. Id. The decision of the lower court herein, therefore, does nothing more than what Texas law provides — Appellant may enforce her judgment by civil contempt and not by garnishment or execution. Because Appellant in the instant case is barred in Texas from seeking to obtain a judgment upon which she could enforce by garnishment or execution, the Courts in Utah are not required by the Full Faith and Credit Clause to give her that right in Utah.

In addition, in Texas the domestic relations court has the "power and authority to alter or change such judgments, or

suspend the same, as the facts and circumstances may require...."  
V.T.C.S. Art. 4639a §1. In the instant case, therefore, the  
lower court, has done precisely what the Texas law could have  
done, i.e., suspend execution or enforcement of the judgment.

Full faith and credit has, therefore, been given to the  
Texas decree by the lower court. By her appeal, Appellant seeks  
the right of execution which right is not available to her under  
the Texas decree. The judgment below must, therefore, be affirmed.

### POINT III

UNDER UTAH LAW THE COURT MAY STAY EXECUTION UPON  
A JUDGMENT IF JUSTICE REQUIRES.

In the instant case it is clear from the record that  
Mr. Blackburn made substantial effort to pay child support.  
Despite his personal problems and periods of unemployment  
(Tr. 3,6). During part of the period he had worked for a  
company which had financial difficulties he did not get paid  
(Tr. 3-4). The record does reflect that Mr. Blackburn was  
willing to accept nearly any kind of employment including farm  
labor (Tr. 9). This effort on the part of Mr. Blackburn is  
relevant. Because support obligations are not dischargeable in  
bankruptcy, a support arrearage reduced to judgment can in some  
cases represent an unbearable burden. It is the public policy

of this state that courts have the equitable power to give some relief to a defendant who has a judgment for support against him, who is willing to provide support to the extent he is able.

With no legal relief available from bankruptcy and no equitable relief available from the courts, some fathers against whom a judgment for support had been obtained might feel compelled to flee — all to the loss of the parties and their children.

The power of the lower court to give equitable relief when justice requires is set forth in Rule 62(a) of the Utah Rules of Civil Procedure.

Execution or other proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs. (Emphasis added)

Moreover, the Utah Rules of Civil Procedure further provide that:

On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party...from a final judgment...for...any...reason justifying relief from operation of the judgment. Rule 60(b) (Emphasis added)

The above rules pertain generally, but in domestic relations cases, the Legislature has specifically provided that:

When a decree of divorce is made, the court may make such orders in relation to the children, property and parties, and the maintenance of the parties and children, as may be equitable.

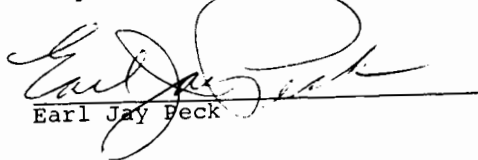
The court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of the children and their support and maintenance, or the distribution of the property as shall be reasonable and necessary. Utah Code Ann. §30-3-5(1) (1979 Supp.) (Emphasis added)

Although a court may not ultimately forgive accrued support obligations, under Utah law, a court may suspend execution or provide for a means of paying a judgment for child support.

#### CONCLUSION

Appellant is not entitled to garnish and execute on her judgment under Texas law. The lower court's order does nothing more than place the same restraint on the judgment here in Utah. In any event, Appellant is not prejudiced by the stay of execution.

Respectfully submitted,

  
Earl Jay Beck

MAILING CERTIFICATE

I hereby certify that I served the foregoing Brief  
of Defendant-Respondent by mailing a true and correct copy  
thereof to Craig S. Cook, 3645 East 3100 South, Salt Lake  
City, Utah 84109 this 16 day of January, 1980.

Carl Sayre